STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF ELENA STOYKA, by MICHELLE STOYKA, her Personal Representative, and MICHELLE STOYKA and MICHAEL STOYKA, Individually,

Plaintiffs-Appellants,

v

MT. CLEMENS GENERAL HOSPITAL, DR. MICHAEL KITTO, MACOMB EMERGENCY CARE PHYSICIANS, P.C., and DR. ROBERT FABER,

Defendants-Appellees,

and

ST. JOSEPH MERCY OF MACOMB and DR. HARRY ARETAKIS,

Defendants.

UNPUBLISHED
April 19, 2007

No. 271970
Macomb Circuit Court
LC No. 04-002686-NH

Before: Jansen, P.J., and Neff and Hoekstra, JJ.

JANSEN, P.J. (*dissenting*).

Because I believe that the trial court correctly determined that plaintiffs' notices of intent did not satisfy the requirements of MCL 600.2912b(4), I respectfully dissent.

"The unambiguous language of MCL 600.2912b(4) requires a medical malpractice plaintiff to include in her notice of intent a statement of (1) the factual basis for the claim, (2) the applicable standard of practice or care alleged by the claimant, (3) the manner in which it is claimed that the applicable standard of practice or care was breached, (4) the alleged action that should have been taken to comply with the alleged standard, (5) the manner in which it is claimed that the breach was the proximate cause of the injury claimed in the notice, and (6) the names of all professionals and facilities the claimant is notifying." *Roberts v Mecosta Co Gen Hosp (After Remand)*, 470 Mich 679, 682; 684 NW2d 711 (2004). The plaintiff bears the burden of establishing compliance with § 2912b. *Id.* at 691. A medical malpractice plaintiff must make "a good-faith effort to aver *the specific standard of care that she is claiming to be applicable to*

each particular professional or facility that is named in the notice." *Id*. at 691-692 (emphasis added).

The notices of intent complied with the statute to the extent that they indicated that the institutional defendants were being sued both directly, for the allegedly negligent selection and supervision of medical staff, and vicariously, for the alleged negligence of individual staff members. *Id.* at 693, 693 n 10. However, the notices of intent otherwise stated the alleged standards of care in the aggregate, and merely listed the actions that allegedly should have been taken without identifying which individual defendant or defendants should have taken each listed action.

I acknowledge that the notices of intent did specify how the standards of care were breached *in general*, and what actions should have been taken *in the aggregate* to comply with those standards of care. See *Boodt v Borgess Medical Ctr*, 272 Mich App 621, 630; 728 NW2d 471 (2006) (lumping the requirements of MCL 600.2912b(4)(b), (c), and (d) into a single paragraph "might be a risky practice that lends itself to misconstruction," but it "is not an inherently fatal deficiency"). However, the problem with plaintiffs' notices of intent was that they did not otherwise distinguish or differentiate among the various defendants. That is, the notices did not precisely identify the standard of care applicable to each of the various healthcare providers, despite the obvious fact that the standards of care were not necessarily the same for each of the named defendants. See *Roberts*, *supra* at 692 n 8. Nor did the notices of intent indicate whether the applicable standards of practice required each named defendant to take all of the listed actions, or in contrast whether the applicable standards of practice required each named defendant to take *only some* of the listed actions. Because the notices of intent did not indicate the particular standard of care applicable to each specific defendant, and because they did not specify exactly which defendants should have taken which of the listed actions, the trial court did not err in finding that the requirements of § 2912b(4) were not satisfied. I would affirm.

/s/ Kathleen Jansen